IN THE MATTER OF AN ARBITRATION

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| BETWEEN: | CANADIAN NATIONAL RAILWAY COMPANY |
| AND | NATIONAL AUTOMOBILE. AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA, LOCAL 100 |

AND IN THE MATTER OF SEVERAL GRIEVANCES OF J. FERRARO

ARBITRATOR: J.F.W. Weatherill

A hearing in this matter was held at Toronto on June 21 and June 22, 2010.

B. Stevens, for the union.

S. Prudames and F. O'Neill, for the company.

AWARD

The Joint Statement of Issue in this matter is as follows:

> *On April 5, 2005, Car Mechanic Helper John Ferraro sustained a workplace injury which resulted in a requirement for a workplace accommodation. The union filed a number of grievances contending that Mr. Ferraro has not been properly accommodated pursuant to Rules 17, 23, 27.4 and 43.1(a) of Agreement # 12, the Canadian Human Rights Act and the Employment Equity Act.*

- *June 13, 2005*
- *July 29, 2005*
- *October 23, 2005*
- *December 23, 2005*
- *December 7, 2006*
- *January 4, 2007*
- *March 10, 2009*
- *April 24, 2009*

*The Union requests that grievances be upheld and that the parties meet pursuant to Rule 17 to facilitate the return to work of Mr. Ferraro in a suitable position within CN Rail. Further, the Union is requesting that the grievor be made whole and that compensatory damages be awarded to reflect the seriousness of the discrimination and harassment endured by the grievor at the hands of the Company.*

*The Union also contends that the Letter to File issued on October 22, 2004 amounted to a discipline letter and as such Mr. Ferraro was not afforded the contractual rights outlined in Rule 27 to Notice, Fair and Impartial Investigation and Union representation. The Union requests that the Letter to File placed in Mr. Ferraro's file be removed from all Company records.*

*The Company disagrees with the Union's contention and has declined the Union's grievances.*

I shall deal first with the "Letter to File" of October 22, 2004, referred to in the Joint Statement. On November 22, 2004, the union filed a step one grievance with the company over the issue of "the attached letter of discipline", which was sent to the grievor on October 22, 2004. At the hearing, the union sought an order of production of the letter by the company. The company advised that there was no such letter in its possession, and that there was no reference to such a letter in the grievor's discipline record. Later, at the commencement of argument, the company argued that the matter had not been properly referred to arbitration, and so was not properly



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 4/43

before me. This objection, which might have had merit if raised in a timely fashion, does not appear to have been raised until the beginning of the company's argument at the hearing. The matter is referred to in the Joint Statement of Issue, without any reference to a question of arbitrability. In my view, this objection must be taken to have been waived, and I consider that the question of the "letter of discipline" is properly before me.

It is the company's position that the letter is not one of discipline, but is a "coaching letter", and in my view, that position is correct. The letter (which does appear in the union's book of exhibits) states that the grievor's absenteeism was at 21.64%, in excess of the industry standard, and was unacceptable. The company advised the grievor that it expected immediate improvement, and that his attendance would be monitored. There is nothing in the material before me to indicate that the letter should be read as a disciplinary measure, and nothing to suggest that it ever appeared in the grievor's discipline record. It is natural for an employer to be concerned about a bad attendance record, and perfectly proper for it to bring that concern to an employee's attention, and to counsel him or her in that regard. To do simply that, however, is not to impose any sort of formal discipline, and I cannot find that any was imposed in this case. Accordingly, this first grievance must be dismissed.

The union argued that the letter referred to above was the beginning of a systematic pattern of discrimination and harassment. I shall return to the questions of discrimination and harassment later in this award, but as far as the "coaching" letter is concerned, nothing in the material before me supports the conclusion that the grievor's attendance record was not a proper cause of concern, or that he was somehow singled out for counseling from among other employees whose records



15-JUL-2010 14:20 ARBITRATION SERVICES LIMITED 6135695288 5/43

might also have been a cause for concern.

The grievor, who was hired by the company on September 12, 1978, worked at the Oshawa Facility as Car Mechanic Helper at the material times. On April 5, 2005, the grievor fell backwards while attempting to open the doors of a rail car, and sustained injuries to his back and neck. As a result of the accident, the grievor was off work for a brief period, and when he returned, was subject to certain limitations, which included no lifting of over ten pounds, no bending of neck or back and no climbing. It was at first expected that these restrictions would be in effect for about one month, but it became apparent that they would continue, and further accommodation became necessary.

On June 13, 2005, the first of the grievances arising out of the grievor's accident of April 5 was filed. It alleged a violation of Rule 43.1(a) and "any other rules that might apply". Rule 43.1(a) is as follows:

> *It is agreed by the Company and the Union that there shall be no discrimination or harassment towards an employee based on the employee's age, marital status, race, colour, national or ethnic origin, political or religious affiliation, sex, family status, pregnancy, disability, union membership, sexual orientation, or conviction for which a pardon has been granted.*

The union referred to various incidents in support of its claim. One was that the company appears to have investigated the accident of April 5th three times, twice (one being a re-enactment) on April 6 and once on April 9. While that may be suggestive (although not very probative) of a certain scepticism on the part of the company, it does not in itself amount to harassment or discrimination against the grievor. Another was that the grievor was required, as part of his modified duties, to



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 6/43

lift chocks weighing more that the limit of ten pounds which had been imposed. In fact, when it was determined that some of the chocks weighed 13.2 pounds, the grievor was at once instructed not to lift them. A more serious complaint, in my view, is that on May 6, 2005, the grievor received a letter from his supervisor advising him to report to day shift on May 9 to complete his modified duties. The grievor had worked the night shift for some time, and it was important to him to continue to do so, since otherwise he would have to make child care arrangements. While a change of shift might in some cases be part of an appropriate accommodation arrangement, such arrangements are, in general, to be agreed on, and there was no such agreement in this case. Rule 17 of the collective agreement (which is consistent with the provisions of Part V of the *Workplace Safety and Insurance Act*) provides in Rule 17.1 as follows:

> *Employees who have given long and faithful service in the employ of the company and who have become unable to handle heavy work to advantage will be given preference of such light work in their line as they are able to handle (subject to pension regulation age limits) as mutually agreed between the proper officer of the Company and the respective Regional Vice-President. Neither party shall unreasonably withhold their agreement.*

In my view, the unilateral change of shift in these circumstances was in violation of this Rule. (Some time later, because of declining business at Oshawa, the night shift was abolished. The grievor could not reasonably expect to be assigned night shift duties after that.) At the time, however, the grievor was adversely affected by the change, which is not justified on the material before me. This grievance will accordingly be allowed in part.

By way of relief, the union requested payment of lost shift differentials,



13-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 7/43

payment for three days' lost wages, payment of ten thousand dollars on account of discrimination and harassment and a requirement that all management involved take a refresher course in human rights legislation. The payment of damages and the giving of special directions in cases where there are findings of discrimination and harassment are matters to which I shall turn at the end of this award. The matter of the claim for lost wages may be briefly dealt with at this point. The grievor was absent for three days, it is claimed, "due to management's decision to violate restrictions placed on him by his Doctor". This would appear to be a reference to the task of sorting chocks. As soon as it was realized that some of the chocks exceeded the weight limit, the grievor was directed not to lift those chocks, which would seem to be easily identifiable. It cannot be said that the company deliberately sought to violate the medical restrictions. Rather, the company sought to comply with them. There is no merit in this aspect of the grievance.

The next grievance referred to in the Joint Statement is that of July 29, 2005. This grievance also refers to Rule 43, and specifically alleges that the company "has demonstrated discrimination and harassment against [the grievor] in its treatment of him on July 20, 2005. On that day the grievor, who was still subject to work restrictions (and has been at all times up to the present), was directed to "watch out for trains" while engineering employees were doing some track repairs at the Oshawa Repair Facility. It would appear that this work would come under the scope of another collective agreement. That raises a question that will be dealt with later in this award, but it was not the thrust of this particular grievance. While it does not seem to be doubted that the grievor was physically capable of performing this work - providing what is known as "red flag" protection to employees working on tracks - it involved a knowledge of rules with which the grievor could not be expected to be familiar, although he would, as an employee in the Mechanical Department, have



15-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 8/43

knowledge of the "blue flag" rules, involving the locking-out of tracks being worked on by employees. These rules are of the highest importance, vital to the safety of employees working on tracks. On July 20 the grievor, quite rightly, questioned the procedures he was being asked to perform. The company appears to have considered that a refusal to work, but it was not. The grievor was called immediately to an "investigation", which does not appear to have complied with Rule 27. In the course of that discussion, the grievor asked if the company was willing to train him for the suggested work, a perfectly reasonable question. At that point the company discontinued the discussion and, in the words of the grievance, "the harassment was discontinued and the Company ceased insisting he work for the Engineering Department".

It is possible to consider the company's treatment of the grievor on that occasion as a mild form of harassment, although I think that the best characterization of it would be as a waste of time, particularly managerial time, although that of course is the company's affair. It was certainly not a well-considered effort at accommodation to direct the grievor to perform an important safety function under a set of rules with which he was not familiar. Again, as in the previous grievance, there was no effort at compliance with Rule 17. The grievance should be allowed, but I shall deal with the matter of relief at the end of this award. In this particular grievance, the union requests that the company be directed to cease and desist from discrimination and harassment against the grievor. This award will include such a direction.

A further grievance was filed on September 21, 2005, protesting the assessment, on September 15, 2005, of 15 demerits against the grievor for failure to protect work assignments on August 4, 8, 11, 12 and 15, 2005. The 15 demerits were



15-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 9/43

subsequently withdrawn from the grievor's discipline record, and the matter of discipline is not before me. It is noteworthy, however, that at the investigation preceding the discipline (the investigation itself appears to have been in proper form) the grievor was advised that the company's records indicated an absenteeism rate of 41.88% for the period from August 4 through August 15, 2005. An absenteeism rate as high as that would indeed be a cause for serious concern, if it were a rate calculated over some natural and reasonable period. But to calculate the rate from the start until the end of the absences is of course meaningless. If an employee were absent on one day, his "absenteeism rate" for that day would be 100%! The serious concern in this case is that the company would state the grievor's "rate" of absence in such a misleading way. While the matter of discipline itself is not before me, the company's conduct in this instance may be considered an indication of negative animus towards the grievor, and supports the union's contention that he was the subject of harassment.

The third grievance before me is dated October 23, 2005. In that grievance, the grievor protests the company's failure to return him to his pre-accident duties and shift following his presentation, on October 6, of a WSIB Functional Abilities Form, and his assertion at that time that his own doctor had stated he could return to pre-accident duties subject to not working in tri-level cars. The grievance also refers to an earlier accommodation in March, 2000, by which the grievor would perform door opening duties. It may be that in 2000 the grievor was properly accommodated in respect of disabilities he may have had at that time, but that was five years prior to the accident which led to the grievor's present condition. (The company's response in respect of the 2000 accommodation - that it became null and void when the supervisor involved was transferred - is obviously quite illogical. That response was given by the Mechanical Supervisor, now retired, who may be thought, from a number of the grievances in which he was in some way involved, to have had a negative attitude



13-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 10/43

toward the grievor.) The accommodation reached in 2000 was no longer effective, because the grievor's condition had changed. He now required a different accommodation, and the union's reliance on the 2000 accommodation was inappropriate.

The company's reply to the grievance included the statement that the grievor had not in fact provided a return to work form stating that he was ready to return to pre-injury duties, and that all his forms indicated that he could only perform duties as tolerated. The Functional Abilities Form does not appear in the materials before me, and it is clear from the grievance itself that the grievor remained subject to some limitations. The case for his return at that time to his pre-accident duties has not been made out. It appears again, however, that no serious consideration had been given to Rule 17, or to any genuine efforts at accommodation.

The grievance claims payment for childcare, a return to the pre-accident position, and the payment of ten thousand dollars damages. The basis of this grievance has not been established, and these claims cannot be granted.

The fourth grievance is dated December 23, 2005, and alleges the company improperly imposed a restriction on the grievor's work as a car door opener. The grievance itself indicates the company was imposing a restriction which was not inconsistent with those referred to above. While the same relief is claimed as in the previous grievance, the material before me does not establish any particular improper action on the part of the company. While the grievance itself appears to be largely without merit, and will be dismissed, the correspondence relating to it indicates a continuing failure to address the grievor's need for accommodation in an orderly way, as required by Rule 17 and the legislation, and this is something properly to be taken



15-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 11/43

into account in assessing the totality of the grievances and is the fundamental question presented to me.

The fifth grievance is dated December 7, 2006. It would appear that the grievor had been at work, on modified duties and apparently still on the day shift, for some time, although there appears to have been no formal accommodation as contemplated by the collective agreement. A number of the foregoing grievances had been submitted for arbitration, but there does not appear to have been any progress in setting them down for hearing. The grievor had, as will appear, been absent - apparently as a result of the April 5, 2005, injury - and sought to return to work in early December. The substance of the grievance (addressed to the then Mechanical Supervisor) is as follows:

> *Due to his disability, [the grievor] was absent from the workplace as of November 13, 2006. On November 30, 2006 he spoke with you and informed you that he would be returning to active service as of December 04, 2006 and was instructed by you to present a doctor's note at that time indicating whether or not he required restricted duties (facilitation). On this date, he also requested a Rule 17 accommodation. He arrived on the 4th, gave you the requested note and included a letter advising you that he was initiating a WSIB claim in relation to his injury that precipitated his disability (until that time he was in receipt of disability benefit from GWL). He was told to walk through bi-level rail cars and inspect chocks, which he did. On December 05, 2006 he was informed by way of telephone from you that he was not to report for work that day as you claimed the nature of his restrictions from his doctor's note were not clear.*
>
> *[The grievor] is presently at home receiving no monies from CN, WSIB or GWL.*

The relief claimed is accommodation, and the payment of five thousand dollars



13-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 12/43

compensation.

The material before me includes a copy of the doctor's note, which states that the grievor "may return Dec 4 on modified duties: no lifting/no bending/no pushing". That would appear to be sufficiently clear to me. And while, in the circumstances, the company might have been entitled to require the grievor to undergo further medical examination, it was not justified in holding him off work. The grievor is entitled to compensation for loss of work at that time, and of course it is clear that accommodation was required. The grievance is allowed to that extent. This is not an instance in which an award of damages for pain and suffering is called for.

On December 6, 2006, the grievor's doctor signed a Return to Work - Restrictions report, indicating the grievor was fit for modified duties from December 4. The company then prepared a Transitional Work Plan which provided for the grievor to work on modified duties on the day shift, starting December 18. The work plan itself recognizes the grievor's disabilities and was no doubt a sincere effort on the part of those who prepared it to accommodate the grievor. There is, however, no explanation for the grievor's being held off work until December 18, nor for his assignment to the day shift. Such plans were prepared on more than one occasion. They may have been good plans, but they were not prepared having regard to the consultative procedure called for by Rule 17.

The sixth grievance is dated January 4, 2007. The substance of the grievance is set out as follows:

> *On or about December 15, 2006 [the grievor] was contacted by a representative of the return to work committee CN RAIL, regarding his desire to return to work. He was advised by said*



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 13/43

*person to return to work on December 18 on the day shift. He informed said person that his regular job is on the night shift due to child care reasons, including the cost.*

This gist of the grievance is the company's failure to accommodate the grievor on his assigned shift. Again, compensation for lost shift differentials and child care costs, as well as damages of ten thousand dollars are claimed. As in the first grievance, and as in the case of the Transitional Work Plan just referred to, there appears to have been no compliance with Rule 17, and, in the case of this grievance at least, the company appears to have made no reply at either the first or second stage. In these circumstances, the only conclusion can be that the failure to return the grievor to his regular shift is unexplained and was improper. The grievance is allowed to that extent although, again, I will deal with the matter of the relief to which the grievor will be entitled at the end of this award.

The seventh grievance is dated March 10, 2009, and relates to the company's "unilateral reassigning [the grievor] to a position outside the bargaining unit". The relief sought is that the grievor be returned "to his agreed upon facilitated position at the Oshawa Terminal, within his rightfully representative Bargaining Unit", and paid damages of ten thousand dollars for pain and suffering.

Both parties agree that there had been a meeting in December of 2007 at which an accommodation for the grievor was agreed. The grievance describes that meeting as follows:

*In December 2007, an Agreement 12, Rule 17 meeting between the CAW and CN was convened for the purpose of accommodating/integrating [the grievor] back into the workplace. His current workplace duties at the Oshawa*



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 14/43

*Terminal were mutually agreed to as being an appropriate job assignment.*

The grievance then makes the following allegation:

*The arbitrarily made decision to abolish this job and to force him into another was made in violation of Rule 17. There was no discussion or meeting, as per Rule17, in regard to moving him to another position within the Agreement 12 Shopcraft group, let alone another bargaining unit.*

The grievance makes the further allegation that the company has transferred the grievor because of his activities as the WSIB representative on the Local Committee.

The company's response to the substance of the grievance was as follows:

*There has been a significant downturn in the operations at the Oshawa terminal where the grievor is employed. The Company's decision to place the grievor on the position of Crew Dispatcher was to ensure that he was afforded productive, meaningful work. Further the posttion of Crew Dispatcher was sedentary in nature and did not require any heavy lifting, pushing, pulling or repetitive bending and as such fell well within the grievor's physical restrictions.*

In fact, the grievor failed the training for the Crew Dispatcher position and was not appointed to it. The decision by the company to send the grievor for training was not, in my view, arbitrary: there had in fact been a significant reduction in operations at Oshawa at the time, and it was reasonable for the company to conclude that the grievor's modified duties were unproductive. As well, while it is alleged that the grievor's union responsiblities were the motivation for the company's action, the mere



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 15/43

allegation is not proof of such a serious charge, and there is no other proof before me, except to the extent that a pattern of animus against the grievor may appear - a matter which will be dealt with later in this award, and which is not the same as any animus against the union as such, with respect to which there is no proof whatsoever.

The union argued that the fact that the grievor had failed training as a Dispatcher on two previous occasions (in 1997 and in 2007) shows that the company knew he would fail and that sending him for training was simply a ruse to move him from his job. That is not a persuasive argument, and may equally be said to show that the company was still hopeful about the grievor, and willing to dedicate its resources to provide a further opportunity. If the training failed, the company, and the union, would again have to concern themselves with his accommodation. Had the grievor succeeded, it would indeed have been, as the company said in its letter of March 3, 2009, "an excellent opportunity for you to continue your employment with CN". In my view, that does not constitute, as the grievance alleged, an "insinuation and threat".

The job of Dispatcher, had the grievor qualified for it, is in another bargaining unit, although that unit is represented by another local of the same union. While one would expect efforts would at first be made (as they were) to find work for a disabled employee within his or her bargaining unit, I agree with arbitrator Picher in CROA 3429, where he says:

> *It is well established that the obligation to find a suitable assignment extends beyond the position currently occupied by the employee, and could even include assigning the person in question to a vacant position in another trade and another bargaining unit.*



15-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 16/43

For the foregoing reasons, the seventh grievance is dismissed.

The eighth grievance dated April 24th, 2009 protests the company "unilaterally reassigning [the grievor] to perform duties out of his scope of work and at another terminal". The grievance also alleges a violation of Rule 17. The only serious allegation here is that the grievor was *unilaterally* reassigned. There appears to have been no attempt to comply with Rule 17, and to that extent this grievance, like some others dealt with in this award, must be allowed. Assignment to duties out of the scope of work, however, can scarcely be considered in itself a violation of the agreement where it is the obligation of the employer - with the cooperation of the grievor and the union - to find some work which a disabled employee can perform productively, whether or not it is within the scope of his classification (although that would be looked to first) and whether or not it is at the same work site (although that too would be looked at first).

On March 25, 2009 the company assigned the grievor to attend a three-hour classroom training session for pull-by train inspections. That was followed by a three-hour practical training session on site. On completion of the training the grievor was advised that he had been successful, and was a qualified pull-by inspector. He was assigned to such duties at the Macmillan Yard Inspection Repair Centre on a schedule of 16:00h - 00:00 hours, with assigned rest days Tuesday and Wednesday.

The work of pull-by inspector was thus work which the grievor was qualified to do. It must be considered to be "productive" work, and it would appear, in itself, to have come within the grievor's physical restrictions. It appears that the circumstances in which the work was performed, which included travel around the



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 17/43

yard in a vehicle, caused the grievor considerable pain, and in that respect the accommodation was not successful. The transfer of the grievor to a job which appeared to be a proper accommodation, was not in itself a violation of his seniority rights, as was also claimed in the grievance. As noted with respect to the previous grievance, accommodation of an employee with a disability or restriction may involve change of occupation or of work location. It may also affect seniority rights, even, where necessary, those of other employees. The assertion in the grievance that the grievor's assignment was a violation of his seniority rights is simply inappropriate in a case like this.

In the step two grievance submission the union amended the claim for relief to include a claim for ten thousand dollars punitive damages, as well as for the difference in wages, and for a Rule 17 meeting. There is no basis in this case for a claim for punitive damages, and it appears the grievor was paid the wages set out in the collective agreement for the work he was performing. The claim in respect of Rule 17, however, is justified, and it is no answer for the company to say, as it did in its step two reply, that "*a Rule 17 meeting was not held but the union was fully aware of the circumstances of the workplace accommodation for the grievor*". Not to have held a Rule 17 meeting was a violation of the collective agreement, and to that extent this grievance is allowed.

I turn now to the question of a "pattern" of animus against the grievor.

While it was, in a general way, argued that throughout the series of grievances and other events dealt with above, the company was out to get the grievor, in part at least because of his union activities, I have indicated with respect to many of these instances that I consider there to be little if any substance to such claims. In some



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 18/43

instances, however, the most probable explanation of what occurred is that a company supervisor did not believe, or simply did not like the grievor - that he was impatient with him and irritated by him. Having regard to all of the material before me, I do not consider that the matter of discrimination goes further than that. It has not been established, on the balance of probabilities, that the grievor was discriminated against because of his union activities.

I do, however, consider that the grievor was, in some of these instances, subject to what I have referred to above as a mild degree of harassment. The unilateral decision to change his shift in May, 2005; the decision to investigate him in July, 2005, when he quite properly questioned an unsafe assignment; the misleading statement of his rate of absenteeism in September, 2005; holding the grievor off work from December 5 to 18, 2006, when he had produced an appropriate doctor's note and, throughout much of the period covered by these grievances, the continual failure to comply with Rule 17: all these establish, in my view, a course - although not a `systematic`one - of harassment of the grievor.

The common theme in these grievances, although not an entirely consistent one, is the failure to comply with Rule 17 of the collective agreement. There have at times, as noted above, been meetings and at least in one instance agreements, which were in compliance with that Rule. For the most part, however, the company has acted unilaterally. It does not appear always to have had the full cooperation of the grievor or of the union, although such cooperation is, as the arbitration cases indicate, an obligation. The company is quite correct in arguing, as it does, that it would be inappropriate to place the grievor in a position beyond his work restrictions. Of course the whole purpose of the exercise contemplated by Rule 17, and by the relevant legislation, is to find an accommodation for the grievor in a position which



15-Jul-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 19/43

is within his work restrictions. The company did make efforts to do this, but as I have indicated, it rarely did so in cooperation with the grievor and the union.

In argument, the company suggests that the grievor himself "failed to attempt the accommodation of Crew Dispatcher". That is a reference to the seventh grievance discussed above. The grievor failed, as he had done before, the training for that position. It has not been shown that he failed deliberately, although it is possible that he did not put forward the effort required (as he was obliged to do). I make no finding in this regard. The company argued that the grievor "failed to attempt" that accommodation, but the material before me does not establish that allegation. The company referred to the decision of the Supreme Court of Canada in *Central Okanagan School District No. 23 v. Renaud*, (1992) 95 D.L.R. (4th) 577, where the Court held that an employee is obliged to accept reasonable accommodation, and when the employee does not do that, the duty to accommodate is discharged. In the instant case, it has not been shown that the grievor "refused to accept reasonable accommodation" when he failed his training as a Dispatcher. I have noted earlier that such a position may well have constituted a reasonable accommodation, and it is perhaps unfortunate that it was not arrived at by mutual agreement following a Rule 17 meeting.

At the time of the hearing of these matters, no accommodation for the grievor had been found. The grievor is in a program of Labour Market Re-Entry rehabilitation, sponsored by the W.S.I.B. The company argues that it has discharged its duty to accommodate the grievor by sponsoring that rehabilitation. That argument would be valid, had the company complied with Rule 17 in a regular and systematic way, and accepted the many grievances over its failure to do so. As it is, none of the material before me permits the conclusion that reasonable accommodation of the



15-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 20/43

grievor was not possible without undue hardship on the company. It would appear that the last position offered the grievor was that of performing roll-by inspections. Such work would appear to have been within his restrictions, but other aspects of the job caused undue pain. There appears to have been no effort by the parties jointly to attempt to resolve this problem (although the union had some suggestions), and the end of the grievor's employment with the company is approaching, shortly before he would be able to retire.

For all of the foregoing reasons, and as noted above with respect to individual grievances, success in these matters is mixed. The grievor has been, as I have found, harassed, and it is directed that such harassment cease. The change of the grievor's shift to day shift in May, 2005, might possibly have been appropriate in the context of a proper accommodation following a Rule 17 meeting, but no such meeting was held, and the justification for such a unilateral change was not made out. Accordingly, the grievor is entitled to payment of shift premiums in respect of all hours actually worked from then until the abolition of the night shift. He is also entitled to payment for shifts from which he was improperly held off work during the periods involved in the December 7, 2005 and January 4, 2007 grievances.

As to damages in respect of harassment, I consider the inclusion of some amount in respect of child care payments appropriate under this head, although most of the claims for damages in respect of harassment and discrimination are exaggerated. There is no basis for a direction with respect to management training, and I note that matter is not included in the Joint Statement. My award in this respect is that the company pay the grievor the sum of two thousand dollars ($2,000.00).

Finally, it is my further award that the parties meet forthwith, pursuant to Rule



15-JUL-2010 14:26 ARBITRATION SERVICES LIMITED 6135695288 21/43

17 of the collective agreement, and in compliance with legislative requirements, to attempt, in a creative way, to find appropriate employment for the grievor, in accordance with what is said by arbitrator Ready in SHP 567 and in the cases cited therein. The grievor is directed to cooperate fully and to make a serious and substantial effort to have this endeavour succeed, knowing this will involve compromise on his part.

I retain jurisdiction to determine any questions arising with respect to the application of the foregoing, and to complete the award as may be necessary.

DATED AT OTTAWA, this 15th day of July, 2010,

Arbitrator